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(577)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P.No.313 OF 2007

PETITIONERS Santosh Koshare & ors

Vs

NON-APPLICANTS State of C.G. & anr.

POST FOR ORDER: 10/9/2007

Sd/-
Dhirendra Mishra
Judge

(78)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.313 OF 2007

PETITIONERS

1. Santosh Koshare, S/o Champa Lal Koshare, aged about 28 years.
2. Champa Lal Koshare, S/o Munshi Lal Koshare, aged about 58 years.
3. Godawari Koshare, W/o Champa Lal Koshare, aged about 52 years.
4. Ku. Neetu Koshare, D/o Champa Lal Koshare, aged about 22 years.
5. Ku. Pinki Koshare, D/o Champa Lal Koshare, aged about 24 years.

All are residence of Krischin Mohalla, Shyam Nagar, Raipur, Distt. Raipur (C.G.)

Vs

NON-APPLICANTS

1. State of Chhattisgarh Through Police Station Mahila Thana, Durg, District Durg (C.G.)
2. Smt. Anita Koshare, W/o Santosh Koshare, aged about 26 years, R/o Ramnagar, Near State Bank of India Supela, Bhilai, Distt. Durg (C.G.)

Present:
Mr. Sunil Sahu, Advocate for the petitioners.
Mr. G.K. Beriwal, Dy. Advocate General for respondent No.1.

O R D E R
(Passed on 10.9.2007)

Per Dhirendra Mishra, J:

1. The petitioners by the instant petition under Section 482 of Code of Criminal Procedure, 1973 (for brevity 'the Code') have prayed for quashing of the order dated 15.1.2007 of Annexure P-1 passed in Criminal Case No.364/05 by the Judicial Magistrate First Class, Durg whereby the application filed by the petitioners herein under Sections 177 & 178 of the Code has been rejected. The petitioners have also prayed for quashing of criminal proceedings pending against them before the trial Court.

2. Grievance of the petitioners is that the complainant/ respondent No.2 herein lodged a report on 17.1.2005 to the

Senior Superintendent of Police, Durg and on the basis of above complaint offence under Section 498-A read with Section 34 of the IPC was registered against the petitioners herein and the charge sheet was filed by the Mahila Police Station, Durg before the Judicial Magistrate First Class, Durg though the place of incident mentioned in the FIR is Shyam Nagar, Raipur. The complainant had earlier also lodged a report on 1.5.2004 with the similar allegations, however, the Station House Officer, Police Station Supela after conducting enquiry communicated the Senior Superintendent of Police, Durg that the allegations of offence pertains to the jurisdiction of Raipur and it is not in connection with the Police Station Supela, Durg. Even from perusal of the written report as also statement of the complainant it is clear that the place of incident is Raipur and no part of cause of action arose within the territorial jurisdiction of the Judicial Magistrate First Class, Durg. However, the trial court has rejected the objection of the petitioners filed under Sections 177 & 178 of the Code pertaining to the lack of territorial jurisdiction. Reliance is place on the judgments reported in the matter of **Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another[1] & Pratap Chand Rathore and others Vs. State of Chhattisgarh and another[2].**

3. I have heard learned counsel for the parties. I have perused the impugned order as also the documents annexed with the petition.

4. From perusal of the written report, diary statement and other documents filed along with the petition, it is observed that there are allegations against the petitioners that the

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[1] 2004 AIR SCW 4788
[2] 2006 (1) M.P.H.T. 14

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complainant was married with petitioner No.1, father of the complainant gave dowry according to his capacity, however, the petitioners started harassing the complainant for not giving adequate dowry and in the name of demand of Hero Honda motorcycle she was compelled to telephone her father for communicating their demand of motorcycle, whereupon she called her father, who resides at Bhilai and expressed his inability to satisfy their demand. On the next day also her husband called her father to Raipur whereupon her father went to Raipur along with other relatives where the petitioners misbehaved with them also and repeated their demand. Thus, from the evidence available on record it is observed that the demand of dowry was made through telephone from the parents of the complainant, who are residing at Bhilai, District Durg. The marriage was also solemnized at Durg and there are allegations that the complainant was subjected to torture for not bringing adequate dowry.

5. In the matter of Y. Abraham Ajith[1] the Hon'ble Apex Court considering the factual scenario disclosed by the complainant in the complaint petition of that case has reached to the conclusion that no part of cause of action arose in Chennai, therefore, concerned Magistrate has no jurisdiction to deal with the matter and accordingly the proceedings were quashed and the complaint was directed to be returned to the complainant with the liberty that if she chooses, may file the same in the appropriate court to be dealt with in accordance with law.

6. In the matter of Pratap Chand Rathor[2] this Court relying upon the above judgment of the Hon'ble Supreme Court and considering the allegations contained in the charge sheet reached to the conclusion that the offence, if any was

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committed within the territorial jurisdiction of Bangalore and accordingly, quashed the criminal proceedings. However, in the present case there are allegations that the complainant was tortured for demand of dowry at Raipur and thereafter she was forced to communicate their demand to her parents, who are stationed within the territorial jurisdiction of the trial court, and after calling them from Bhilai the demand was further reiterated.

7. It is settled law that powers under Section 482 of the Code is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It has to be exercised only when it finds that initiation/continuance of criminal proceeding amounts to abuse of process of court and quashing would serve the ends of justice. For quashing the complaint, the allegations made in the complaint are to be accepted in its entirety and only when it does not constitute prima-facie offence or make out a case alleged against the accused, the complaint can be quashed. So far as the document of Annexure P-2 is concerned, this document cannot be taken into consideration at this stage.

8. In the result, there is no illegality or infirmity in the impugned order passed by the learned trial court whereby the objections relating to lack of territorial jurisdiction has been rejected by the trial court. The petition of the petitioners has no merit, the same is liable to be dismissed and it is hereby dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge

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